



Jim Doyle  
Governor

Helene Nelson  
Secretary

## State of Wisconsin

### Department of Health and Family Services

#### DIVISION OF DISABILITY AND ELDER SERVICES

BUREAU OF QUALITY ASSURANCE  
1 WEST WILSON STREET  
P O BOX 2969  
MADISON WI 53701-2969

Telephone: 608-266-8481  
FAX: 608-267-0352  
TTY: 608-266-7376  
dhfs.wisconsin.gov

**Date:** September 11, 2006

DDES-BQA Memo 06-020

**To:** Area Administrators / Human Services Area Coordinators  
County COP Coordinators  
County Department of Community Program Directors  
County Departments of Developmental Disabilities Services Directors  
County Departments of Human Services Directors  
County Departments of Social Services Directors  
County Mental Health Coordinators  
County Waiver Coordinators  
DDES Bureau Directors  
DDES Section Chiefs  
Tribal Chairpersons/Human Services Facilitators  
Outpatient Rehabilitation  
Facilities for the Developmentally Disabled  
Mental Health and Alcohol or Other Drug Abuse (AODA) Treatment Programs

**From:** Otis Wood, Director  
Bureau Quality Assurance

### **Interim Guidance on Use of Seclusion and Restraints in Certified Day Treatment Programs for Children**

#### **Subject**

This memo outlines the current Wisconsin law that requires that the use of seclusion, isolation, and restraints for children should only be used in an emergency unless the use is approved by the Department on a case-by-case basis.

Current law permits the use of seclusion, isolation, and restraints in emergency situations when it is likely the client may physically harm himself/herself or others. See paragraph [51.61\(1\)\(i\)](#), Wis. Stats. Wisconsin's laws direct Department review of program policies and approval of the application of those policies on a case-by-case basis for individuals assessed to potentially need seclusion, isolation, or restraint as a regular part of their treatment/behavioral plan.

HFS 40 specifies staff ratio and qualifications, as well as other standards that a Day Treatment Program must meet to be certified according to levels I, II, or III. An initial screen for admission and a multi-disciplinary team assessment is required to determine that an appropriate match of the child's needs and program services can be attained. Mental health, substance abuse,

medication, physical health, behaviors, and dangerous conditions relating to these and other standard elements of the assessment and planning process are required. Adequate training and staff competencies in these areas must be addressed at all levels of treatment. Prevention of crisis in order to avoid the use of restraint or seclusion is a priority due to the high risk of injury and trauma.

The Federal Children's Health Act, P.L. 106-310, provides additional guidance in the definition and development of national standards on the use of restraints and seclusion. Interim procedures under that law require a program to develop an interim procedure to "(i) ensure that a supervisory or senior staff person with training in restraint and seclusion who is competent to conduct a face-to-face assessment (as defined in regulations promulgated by the Secretary), will assess the mental and physical well-being of the child or youth being restrained or secluded and assure that the restraint or seclusion is being done in a safe manner; (ii) ensure that the assessment required under clause (i) take place as soon as practicable, but in no case later than 1 hour after the initiation of the restraint or seclusion; (iii) ensure that the supervisory or senior staff person continues to monitor the situation for the duration of the restraint and seclusion."

Wisconsin statutes and administrative rules are referenced below that highlight certain, but not all, required actions related to restraint, isolation, or seclusion. In addition, federal law regarding needed areas of training provides additional direction for policy development and training of program personnel working with children. Training identified is specific and essential for safe use of restraint or seclusion in emergency situations.

<p><a href="#">Sec. 51.61</a> (1) (i) 1, Wis. Stats.</p>	<p>Patient rights. All patients shall... <i>"Have a right to be free from physical restraint and isolation except for emergency situations or when isolation or restraint is a part of a treatment program. Isolation or restraint may be used only when less restrictive measures are ineffective or not feasible and shall be used for the shortest time possible.... Each facility shall have a written policy covering the use of restraint or isolation which ensures that the dignity of the individual is protected, that the safety of the individual is ensured and that there is regular, frequent monitoring by trained staff to care for bodily needs as required. Isolation or restraint may be used for emergency situations only when it is likely that the patient may physically harm himself or herself or others. The treatment director shall specifically designate physicians who are authorized to order isolation or restraint, and shall specifically designate licensed psychologists who are authorized to order isolation..."</i></p>
<p><a href="#">HFS 94.10</a>, Wis. Admin. Code</p>	<p><b>"Isolation, seclusion and physical restraints.</b> Any service provider using isolation, seclusion, or physical restraint shall have written policies that meet the requirements specified under s. 51.61 (1) (i) 2., Stats. For a community placement, the use of isolation, seclusion or physical restraint <b>shall be specifically approved by the department on a case-by-case basis</b> and by the county department if the county department has authorized the community placement. In granting approval, a determination shall be made that use is necessary for continued community placement of the individual and that supports and safeguards necessary for the individual are in place."</p>

HFS 40.14, Wis. Admin. Code	Client rights. <b>“Policies and Procedures.</b> <i>All programs shall comply with s. 51.61., and Ch. HFS 94 on the rights of clients.”</i>
P.L.106-310 Sec. 595	Children’s Health Act of 2000 <b>“Requirement Relating to the Rights of Residents of Certain Non-Medical, Community-Based Facilities for Children and Youth.</b> ...”(A) <i>the restraints or seclusion are imposed only in emergency circumstance and only to ensure the immediate physical safety of the resident, a staff member, or others and less restrictive interventions have been determined to be ineffective; and (B) the restraints or seclusion are imposed only by an individual trained and certified, by a State-recognized body (as defined in regulation promulgated by the Secretary) and pursuant to a process determined appropriate by the State and approved by the Secretary, in the prevention and use of physical restraint and seclusion, including the needs and behaviors of the population served, relationship building, alternatives to restraint and seclusion, de-escalation methods, avoiding power struggles, thresholds for restraints and seclusion, the physiological and psychological impact of restraint and seclusion, monitoring physical signs of distress and obtaining medical assistance, legal issues, position asphyxia, escape and evasion techniques, time limits, the process for obtaining approval for continued restraints, procedures to address problematic restraints, documentation, processing with children, and follow-up with staff and investigation of injuries and complaints.”</i>

The Department intends to issue additional policy clarification and information on the availability of resources for training and technical assistance at a later date. A federal document of policies and training modules **“Roadmap to Seclusion and Restraint Free Mental Health Services”** in CD ROM may be obtained free of charge from the Center for Mental Health Services at [www.samhsa.gov](http://www.samhsa.gov). An additional document, which may be useful to programs reviewing and developing policy and procedures, is the Wisconsin Department of Public Instruction (WDPI) September 2005 **“Guidelines for the Appropriate Use of Seclusion and Physical Restraint in Special Education Programs.”**

I encourage you to contact us if you have concern on these issues, or questions about training and policy development regarding seclusion or restraints. For questions, or to provide comments related to this memo, please email Jeff Hinz at [hinzje@dhfs.state.wi.us](mailto:hinzje@dhfs.state.wi.us):

Jeff Hinz, Supervisor, Women, Youth and Families Unit  
Bureau of Mental Health and Substance Abuse Services  
Division of Disability and Elder Services  
1 W. Wilson Street, Room 433  
PO Box 7851  
Madison, WI 53707-7851  
Fax: (608) 261-7800